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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Cr. A. No. 1019 **/2004**

APPELLANT (IN JAIL) : Bholu @ Nawaz Khan,
S/o. Late Nawab Khan
Aged about 24 years
Occupation-Labour
R/o. Sanjay Nagar Ward,
Kanker (C.G.)

4433/04
30/11/04
Filed on .....
by Shri Shipre Rajwade ..... Advocate

Regd. to D.R. (J)
23/11/04

VERSUS

RESPONDENT : The State of Chhattisgarh
Through P.S.-Kanker,
District North Bastar Kanker
(C.G.)

CRIMINAL APPEAL U/S. 374 (2) OF CRIMINAL PROCEDURE CODE

COPY

XI-HC-78

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

CR-A-NO-1019/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17.07.2006

Ku. Shipra Biswas, counsel for the appellant.

Shri Ravindra Agarwal, PL for State.

Learned counsel for the appellant at the very outset submitted that she would not assail the conviction of the appellant under Sections 456, 354 of IPC and also under Sections 3 (1) (xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and would argue this appeal only on the question of sentence.

In view of the submission made above, this appeal was heard finally only on the question of sentence.

The appellant was convicted under Sections 456, 354 of the IPC and also under Section 3 (1) (xi) of Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Act, 1989 and was sentenced to undergo rigorous imprisonment for 3 years and a fine of Rs. 1,000/- and in default of payment of fine to undergo SI. for 2 months under Section 456 of IPC, to undergo rigorous imprisonment for 2 years under Section 354 IPC and to undergo rigorous imprisonment for 5 years and a fine of Rs. 1,000/- and in default of payment of fine to undergo SI. for 2 months under Section 3 (1) (xi) of Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Act, 1989 vide judgment 29.9.2004 passed in Sessions Trial No.525/2003 by Shri Surendra Tiwari, Special Judge, Jagdalpur, Distt. Bastar (CG).

The learned trial Judge held that it was proved that in the intervening night of 9th and 10th of October, 2003 the appellant committed house trespass and outraged the modesty of Deepali, a member of Scheduled Caste and Scheduled Tribe by using criminal force on her i.e. by holding her hand

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(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. No. 1019/2004 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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Ku. Shipra Biswas, learned counsel for the appellant submitted that the appellant was in jail during trial since 17.10.2003 to 5.11.2003 and is undergoing sentence from 22.5.2004 till date. The appellant is a poor labourer and due to his incarceration, his family is living in a state of penury. She therefore, prayed that it was a fit case in which the sentence awarded by the learned trial judge should be reduced to the sentence already undergone by the appellant. On the other hand, Shri Agarwal, learned counsel for State opposed the prayer, though formally.

Having heard the rival contentions, I have perused the record. The only allegation against the appellant is that he entered the house of the prosecutrix late at night and caught hold of her hand and on her shouting, ran away from the house. The defence taken by the appellant was that he had been called by the prosecutrix at her house and having been seen by her father, the report was lodged.

Having considered the facts and circumstances of the case and the fact that the appellant has already undergone sentence for a period of 2 years 2 ½ months and incarceration from 17.10.2003 to 5.11.2003 the interest of justice would be served if the sentence of R.I. for 2 years under Section 354 of IPC is maintained and the sentence awarded under Sections 456 of IPC and 3 (1) (xi) of SC/ST Act is reduced to the period already undergone by the appellant. Sentence awarded thus, shall run concurrently. The sentence of fine awarded by the learned trial Judge under Section 456 IPC and 3 (1) (xi) of SC/ST Act is maintained.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya

21-7-06 23.7.06